

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ISAAC GOVAN,

Plaintiff,

-v.-

9:03-CV-0967  
(NAM)(DEP)

DANA M. SMITH, Superintendent of  
Ogdensburg Correctional Facility, *et al.*,

Defendants.  
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**APPEARANCES:**

**OF COUNSEL:**

**Next of Kin:**

Larry Govan  
Plaintiff, *Pro Se*  
60428 Alexis Avenue  
San Bernardino, CA 92407

HON. ELIOT SPITZER  
Office of the Attorney General  
State of New York  
Department of Law  
The Capitol  
Albany, NY 12224

SENTA B. SUIDA, Esq.

**NORMAN A. MORDUE, Chief U.S. District Judge**

**ORDER**

This action was commenced by Plaintiff Isaac Govan ("Plaintiff" or "Govan") on August 5, 2003. The death of Plaintiff was suggested on the record by a notice filed September 8, 2006 by the Office of the New York State Attorney General (the "Attorney General's Office"). *See* Docket No. 74. The notice was also served on the person identified in the Department of Correctional Services' (DOCS) records as Plaintiff's next of kin. *Id.*

Rule 25(a) of the Federal Rules of Civil Procedure sets forth the procedure to be followed

for the substitution of parties upon the death of a party. Rule 25(a)(1) provides that a Motion for Substitution may be filed by any party or by the “successors or representatives of the deceased party.” If a Motion for Substitution is not filed within ninety days after the death of a party has properly been suggested upon the record, “the action shall be dismissed as to the deceased party.” *Id.*

It has been more than ninety days since Defendants’ counsel filed the suggestion of death on the record. *See* Docket No. 74. During such time, no person has filed a Motion for Substitution nor requested an extension of time to file a Motion for Substitution. Therefore, this case must be dismissed.

WHEREFORE, it is hereby

ORDERED, that this case is dismissed pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, and it is further

ORDERED, that defendants’ motion for summary judgment (Dkt. No. 68) and plaintiff’s cross motion for summary judgment (Dkt. No. 71) are denied as moot; and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties, and Plaintiff’s next of kin as set forth above, by regular mail.

IT IS SO ORDERED.

DATE: December 14, 2006

  
Norman A. Mordue  
Chief United States District Court Judge